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Moral Theology

Citations and Notes from Jean Porter's *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics*

Introduction:

Porter recognizes that Natural Law was used to solve a specific set of problems that faced the scholastics. She notes that "because it focused analysis at the level of the most basic principles of human action, [natural law] was more readily adapted to the task of explaining and evaluating practices in a rapidly evolving society" than other competing theories (Porter, 17). We have thus established in the Introduction the possibility of a pluralism of ethical theories within the authentic Christian community. Please keep that in mind throughout the remainder of this presentation.

Porter's claim is that "there is a medieval version of this approach [to natural law] that is both cogent and simple enough *to allow for* development and appropriation in our own context." Moreover, she asserts that "the particular concept of natural law to be examined in this book is fundamentally sound and *can* still serve as a basis for fruitful moral reflection." (Porter, 18). While the latter point may be true, I would argue that despite allowing for and being capable of appropriation for our use today, the contemporary questions of moral theology cannot sufficiently be addressed using the scholastic version of the natural law.

Chapter One:

On page 26, Porter argues for the biological basis for morality. Behavior may be able to be explained, by biological arguments, but there is no way in which such arguments can or should be used to predict human behavior. Therefore, to base a normative system of ethics on such arguments is problematic at best. Stephen Gould and I will return to this point later.

Porter has two convictions, which have already been stated for her book. First, she argues that "the concept of the natural law that emerged in this period is interesting and worthy of serious study in its own right." Second, that the "medieval scholastic writings on the natural law include a great deal that is sound and relevant to contemporary moral thought." (Porter, 28). The first statement is most certainly true and I enjoyed reading this account of natural law. As I have already claimed, however, the second claim is to be rejected.

The conventional version of natural law holds that the "pre-rational aspects of our nature, particularly those associated with the process of reproduction, set clear limits on human action in the form of prohibitions against acts that violate the natural teleologies of biological processes. Hence, this version presupposes a definite idea of human nature and offers a natural law comprised of definite, stringent moral precepts" (Porter, 29).

There are a host of presuppositions in natural law. Porter states that "natural law implies a strong commitment to moral universalism" (Porter, 29). The question arises, however, as to which precedes the other? Does the strong commitment to moral universalism rise out of a developed system of natural law, derived from the observation of natural phenomena, or is the commitment to moral universalism logically prior to the development of natural law? I believe that Porter answers this question with the latter assertion, by stating that the development of natural law was a useful way in which the scholastics solved the problem of creating a system of universal morality in a time of rapid change. So, knowing that all observation is made from convictions, one should state such outright and stop pretending that they have some special claim to correct interpretation.

In developing her nuanced theory of natural law for a contemporary setting, Porter acknowledges that "many theologians came to reject the basic claim that there is an unchanging human nature from which moral nature can be derived" (Porter, 30). Citing the objection of Richard McCormick she notes that "'…anyone who admits human reason as a source of moral wisdom adopts a natural law perspective'" (Porter, 31). By the conclusion of this presentation, I hope that this will serve not as a statement of fact, but as a warning to avoid making any claims of moral wisdom derived of human reason.

In a first broad definition, Porter states that "natural law is a way of reflecting on the moral significance of naturally given conditions and boundaries of human action" (Porter, 33). This, however, can only be understood in the context of scholastics and how they came to develop their concept of natural law, namely the "historical context of European social development and the intellectual context of scholasticism itself" (Porter, 34). Porter demonstrates that "the twelfth and thirteenth centuries were a period of rapid social, economic, and institutional development. The growing expansion and complexity of both civil and ecclesiastical life, and the conflicts that inevitably emerged, generated a need for a framework for legitimation, within which competing social claims could be adjudicated and ordinary men and women could find guidance and structure for their day-to-day lives" (Porter, 39). I will return to the use of natural law as a tool of legitimation later. In order to solve this problem driven by their

environment, the scholastics operated on a method, moving "'from commentary to questioning, and from questioning to systemization'" (Porter, 42).

Using this method "the scholastic concept of the natural law emerged out of reflection on existing social norms and practices" (Porter, 44). These are a set of beliefs that are radically contingent upon the social and intellectual setting of the scholastics. Porter outlines some of the concepts and practices upon which the scholastics drew. These included Ulpian's definition of natural law: "that which nature teaches to all animals" (Porter, 47), and the situation of the "canon lawyers and theologians who spent much or all of their adult lives as academics and whose work was intended primarily for an academic audience" (Porter, 48). In these statements, one should pay close attention to *position* and *audience* of the scholastics. Does this contradict the earlier statement that natural law was practical and intended to solved the problems of men and women in their day-to-day lives? (Porter, 39)

I have already stated that the natural law was useful as solving problems for the scholastics, problems arising out of their *particular* situation. It is necessary to ask, however, what problems did natural law solve for theologians and canonists. First, the "earlier traditions of natural law were given saliency by the intense interest in and reverence for nature…this 'rediscovery of nature' was motivated by theological commitments" (Porter, 49). Again, note that the theory of natural law flowed *from* theological commitment and is grounded upon it, not on radical empiricism. These are good commitments, but if they underlie the conclusions how, then, can the case be made for a claim of universal applicability? Second, "the idea of natural law…was by this point thoroughly imbedded in a framework of scriptural and theological reflection" (Porter, 49). Other conceptions "did not fit the new social arrangements of the more urban and mobile society of this period" (Porter, 50). Thus the natural law was useful for solving problems with other theories that were existent at the time. As has already been indicated, though, this indicates a pluralism of ethical theories. Is there any reason to assume that natural law answers the problems of our time and is not entangled in the scholastic worldview? Finally, in comparison to other theories, natural law "was more readily adapted to the task of explaining and evaluating practices in a rapidly evolving society" (Porter, 50).

Porter then proceeds to lay out what the scholastic version of natural law claimed. "What we find in these writings is a distinctive concept of the natural law, less comprehensive than a systematic theory but more coherent than a set of ad hoc and fragmentary remarks" (Porter, 50). They reveal "shared *assumptions* about nature, reason, and the social order" (Porter, 51). These shared assumptions, I claim, are no longer shared, and thus the natural law cannot form the coherent and unifying (both of concepts and persons)

theory it once did. The scholastic project held together three areas for moral reflection: nature, reason and Scripture. "Their proper relationships…set the agenda for scholastic reflections on the natural law" (Porter, 51). The scholastics advanced the claim of "human morality as the *distinctively rational* expression of needs and ways of behaving that are found more generally throughout the animal kingdom" (Porter, 52). This indicates the importance of naturalistic philosophy for the scholastics, a topic to be treated in more detail in the subsequent chapter. Having already evaluated creation in light of theological interpretation, the natural law was "formulated with a view to affirming the goodness of creation and drawing out the social implications of that affirmation" (Porter, 52). "The scriptural grounding of the natural law provides a way of identifying those aspects of human nature that are normative," (Porter, 52) and thus distinguishing which aspects of the behavior are merely animal and which are rational. Importantly recognizing the contingency of the natural law on the milieu in which it was developed, Porter concludes the chapter claiming that "precisely because of its theological character, this concept does not offer a universal moral code that can be discerned by all rational men and women" (Porter, 53). This will be basis for her theory of natural law to be developed in subsequent chapter beyond the scope of this presentation.

Chapter Two:

An important insight into the natural law, in terms of its *raison d'être*, is given by Porter: "the scholastic concept of the natural law is first a legitimating concept" (Porter, 63). This begs the question, however, as to why actions must be legitimated beyond the simple fact of their being made use of by people? Perhaps this question is seen as reductionistic by some, but I would rather label it pragmatic; I would claim that actions do not need to be subjugated to criteria outside themselves, as to do so gives rise the problematic Hegelian issue of developing criteria.

Again, alluding to some of the presuppositions of the natural law, Porter states that "it does presuppose that there are *natural purposes* in some sense" (Porter, 64). This is a *teleology* and tends towards what Porter identifies as the naturalistic fallacy, namely the idea that nature can be observed for positive and immutable rules. The naturalistic fallacy is a type of determinism. And while Porter's theory does not slip into such determinism, her reliance upon evolutionary biology pushes her natural law towards determinism and thus the naturalistic fallacy.

In acknowledging that there are potential problems with the natural law theory, and in good keeping with the scholastic predilection for enumerating and dismissing objections, Porter notes three critiques of natural law:

1. One critique claims that natural law is not based on observation, but rather uses nature as a proof text for previously held ideological positions. Porter does not address this directly, but seems to dismiss this valid critique of natural law.
2. The second critique is raised by Curran, observing that natural law "wants to cut through the concrete circumstances to arrive at the abstract essence which is always true."
   Porter says such criticism recognizes that some versions of natural law "presuppose an untenable view of human nature as determinate, fixed, and clearly knowable" (Porter, 65).
3. The third critique is raised by such 'new natural law' theorists as Grisez and Finnis, who argue for "rationally self-evident basic goods." (Porter, 65).

The development of the philosophical foundations of natural law can be traced from Cicero, Philo and the stoics, through Aristotle and into the writings of the scholastics. From the stoics and jurists, we learn that "the laws of nature can also be understood as expressions of the will of a divine legislator" (Porter, 69). This is carried forward by a crucial distinction which Aristotle drew: the "distinction between natural and conventional justice" (Porter, 70). This distinction, however, cannot be maintained. I will return to a critique of this distinction shortly.

This led to the development of a scholastic appropriation of naturalistic philosophy. This philosophy resonated with "one of the hallmarks of the twelfth-century renaissance: a resurgence of interest in the natural world" (Porter, 71). Porter notes that "the scholastic jurists and theologians were all trained in Aristotelian natural philosophy." Furthermore, "the natural philosophy of Aristotle provided a basis for arguing that the physical world is good and can be understood as the creation of God alone" (Porter, 74). It is not the case that Aristotle's natural philosophy provided the philosophical foundation for the evaluation of matter and neither intrinsically good or evil, as this position had been settled upon in earlier Christian discourse. There was, however, a great deal of consonance between Aristotle's natural philosophy and Christian theology. Through this, the scholastics "identified nature…as a creative force *with* God…seen in contrast to nature *as* creation" (Porter, 75). The definition of scholastic naturalism given by Porter is "the view that morality arises out of the requirements of human nature rather than divine mandate or sheer convention" (Porter, 98). I argue with Alasdair MacIntyre that convention is the basis of norms of human behavior, and thus we are left with competing rival traditions, which must stand or fall on the basis of their own internal coherence.

In order to conceive of the natural as a basis for human behavior, the scholastics "rely on the traditional distinction between what is *natural* in the sense of existing prior to human customs and legal enactments,

and what is *conventional* or established by human beings" (Porter, 77). This rigid distinction cannot be maintained as much of modern philosophy has shown, especially critical theories that have exposed the subjective nature of observation and the interpretive mode of inquiry. The collapse of this distinction and its results for the undermining of natural law will be treated shortly. In order to uphold this distinction, however, the scholastic concept of the natural law "presupposes that the human person is a substance with an intelligible, specific nature, in terms of which human behavior can be understood and evaluated" (Porter, 79). The "presupposition that natural processes are *prima facie* good is closely connected to another aspect of the scholastic concept of the natural law…[viz.] readily ascribing intrinsic value to those aspects of existence and life that we share with other animals" (Porter, 80). This presupposition will serve as the basis for a great deal of specific precepts governing sexual ethics under the natural law. This may be problematic, but I will not treat it specifically or directly, although I would encourage us to discuss it as time permits.

Furthermore, the scholastics "saw the *orderly* processes of nature as expressions of the reason of God" (Porter, 85). This position can be maintained logically, however, developments since the scholastic period in the sciences call into question whether or not nature is as ordered as one might like to think. An example from the 1930s is the Heisenberg uncertainty principle. The profound paradigm shift effected by this new understanding of the relation of physical elements to one another has profound implications for such fundamental notions as causality and the determination of the future behavior, calling into question the supposed orderly arrangement of matter. Even earlier, the mathematical understanding of probability, which was invented by the French Catholic theologian Pascal to help his friends win at gambling, calls into the question the perfect order and correlation assumed by the ancient and medieval world. There are manifold cultural reasons why the scholastics and we too might desire that order prevail, but empirically this does not appear to be the case and theories which maintain such order have ceased to be useful in solving both scientific and social problems.

Porter explains that non-humans participate in the natural law, even if they are not aware of doing so: "while all of creation acts *in accordance with* rational principles, only rational creatures are capable of consciously *following* rational principles" (Porter, 88). Furthermore, the natural law is "not specific moral rules but basic axioms of practical reason, analogous to such fundamental axioms of speculative reason as the law of non-contradiction" (Porter, 89). That is to say that later appropriations of the natural law that created intricate systems of precise moral guidelines are not consistent with the scholastic concept which Porter wants to recover for the contemporary questions of Christian ethics. For theologians, the natural law was different than it was for canonists: natural law is "the fundamental norms

by which the power of moral discernment operates, rather than as the power itself" (Porter, 90). Thus, it does not seem to be stretch to state that the scholastic version of theological natural law that Porter wishes to recover is something like the ability to discern good from bad and right from wrong. I would contend, however, that even this apparatus is not universal, but rather inculcated by our existence as social beings. A similar contingency has been demonstrated for the foundational principles of speculative reason which Porter conceives of as analogous to the natural law, primarily through the failure of the enlightenment project to identify universally acceptable principles of reason and logic from which all future arguments might have been made.

Moreover, the scholastics hold that the faculty to discern good from bad is primarily seated in reason, denying that moral responses can be visceral reactions, inculcated by habit and practice, as virtue ethics would assert. "Albert, Aquinas, and Bonaventure all consider the natural law to be habitually known through the reason, more specifically through synderesis…" (Porter, 89). (Synderesis is a concept from the scholastic period that arose from a translation error by Jerome in the book of Ezekiel). Further, they argue that "reason serves to establish norms for social living" (Porter, 96). Since the dawn of the Enlightenment, a major project of philosophers has been to try to establish or at least justify the norms for social living in reason. This was the project of Jean Jacques Rousseau and the recently deceased liberal political philosopher John Rawls, both of whom ultimately have had their projects refuted. I contend with such communitarian philosophers as Michael Walzer, that social living itself brings about the conditions that necessitate the development of reason as a concept whereby social groupings can govern their actions so that social living continues to be possible.

There are several points in Porter's otherwise erudite examination of natural law that she draws upon the conclusions of evolutionary psychology as a potential validation of the natural origins of human morality. I must say that this strikes me as picking and choosing the scientific models that are useful for the theory or natural law. We have already seen how the widely accepted Heisenberg uncertainty principle seems to be antithetical the natural law tradition, yet Porter accepts the idea "that morality stems from species-specific behavioral patterns that can be partially explained through evolutionary theory and that are further illuminated by the comparison with the characteristic behaviors of other primates" (Porter, 100). It first must be pointed out that the conclusions of evolutionary psychology are tenuous at best. I acknowledge, however, the glamour of such theories. I myself at one time was interested in the theories and wrote a paper relying upon developments in evolutionary psychology demonstrating that the natural state of human beings is serial monogamy, lasting for *circa* four years. I have since come to recognize that, regardless of how consistent certain conclusions of evolutionary psychology may be with Catholic

ethical theory (not specific moral claims), evolutionary psychology must be rejected on its own grounds. The main proponents of evolutionary psychology are Steven Pinker, Richard Dawkins and Daniel Dennett. The work of Dawkins, whose most prominent publication is *The Selfish Gene*, has been denounced by all others doing genetics as a misunderstanding of the principles of genetic modification in general and a deliberate misreading of data, selected according to a predetermined agenda of the ants and bees which he studied. They not only have these methodological problems, but Dawkins and Dennett continue to reject the widely accepted hypothesis of punctuated equilibrium in evolutionary theory, for if they were to accept it, they would remove part of the foundation for their misguided theories. I can go into much greater detail if anyone would like, but for now, please accept the position the late Stephen Jay Gould that evolutionary psychology (or adaptationism, as it is called in much scientific literature) is ill founded.

Citing the anti-Liberalist, anti-Egalitarian philosopher John Kekes, Porter remarks that in contrast to the scholastics, "historicists maintain that all substantive characteristics are variable" (Porter, 105). It is my hope that while in this short space I have not been able to demonstrate that the historicist viewpoint it tenable, I have been at least been able to show that it offers a serious critique to the natural law, whether in its scholastic recension or Porter's contemporary reclamation.

As a final note, to bring us to the critique of the critique of distinction between the natural and conventional, I note Porter's statement that "it is particularly difficult to keep fact and value separate when we ourselves are the subject of investigation" (Porter, 106). It is not only difficult, it is utterly impossible. As the contemporary philosopher and pragmatist Hilary Putnam writes in *The Collapse of the Fact/Value Dichotomy and Other Essays*: "In the preceding chapters I criticized the arguments for the fact/value dichotomy. I showed, first, that both historically and conceptually those arguments originated in an impoverished empiricist (and later an equally impoverished logical positivist) conception of fact, and second, that if we do not see that facts and values are deeply 'entangled' we shall misunderstand the nature of fact as badly as logical positivists misunderstood the nature of value" (Putnam, 46).

It is my hope that this critique of Porter's natural law is seen as fair, as her work is certainly well developed and edifying to read. However, I find it difficult to defend in light of contemporary understandings in a wide number of intellectual disciplines.